



# Oregon

Kate Brown, Governor

## Water Resources Department

North Mall Office Building  
725 Summer St NE, Suite A  
Salem, OR 97301  
Phone (503) 986-0900  
Fax (503) 986-0904  
[www.wrd.state.or.us](http://www.wrd.state.or.us)

June 8, 2017

JB INSTANT LAWN  
C/O JENSEN FAMILY LLC  
5289 BLUE GRASS LANE  
SILVERTON, OR 97381

SUBJECT: Water Right Transfer Application T-12445

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12445. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Silverton Appeal newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at [Jessica.L.Joye@oregon.gov](mailto:Jessica.L.Joye@oregon.gov) or by phone at 503-986-0814, if I may be of assistance.

Sincerely,

Jessica Joye  
Transfer Specialist  
Transfer and Conservation Section

cc: Transfer Application T-12445  
Joel Plahn, District #16 Watermaster (*via e-mail*)  
Doann Hamilton, Agent for the applicant (*via e-mail*)

**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON**

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12445, Marion County	)	PROPOSING APPROVAL OF
	)	ADDITIONAL POINTS OF
	)	APPROPRIATION

**Authority**

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

JB INSTANT LAWN  
C/O JENSEN FAMILY LLC  
5289 BLUE GRASS LANE  
SILVERTON, OR 97381

**Findings of Fact**

1. On July 27, 2016, JB INSTANT LAWN C/O JENSEN FAMILY LLC filed an application for additional points of appropriation under Certificate 44105. The Department assigned the application number T-12445.
2. Notice of the application for transfer was published on August 9, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 19, 2017, the applicant's agent notified the Department of a scrivener's error in the listing of the rates for Well No. 1 and Well No. 2.
4. On May 24, 2017, the Department corrected the rate for each authorized well.
5. On May 19, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12445 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 19, 2017, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

6. The portion of the right to be transferred is as follows:

**Certificate:** 44105 in the name of J.B. SOD & SEED AND CARL F. JENSEN  
(perfected under Permit G-5042)

**Use:** IRRIGATION of 117.1 ACRES

**Priority Date:** NOVEMBER 23, 1970

**Rate:** 1.46 CUBIC FEET PER SECOND (CFS), BEING 0.64 CFS FROM  
WELL NO. 1 AND 0.82 CFS FROM WELL NO. 2

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Sources:** TWO WELLS, A TRIBUTARY OF WOODS CREEK, A TRIBUTARY OF THE PUDDING RIVER

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	2 W	WM	35	SW NW	46	WELL 1 - 320 FEET NORTH AND 310 FEET EAST FROM THE W1/4 CORNER OF SECTION 35
6 S	2 W	WM	35	NW SW	46	WELL 2 - 240 FEET SOUTH AND 290 FEET EAST FROM THE W1/4 CORNER OF SECTION 35

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	2 W	WM	34	NE SE	47	23.4
6 S	2 W	WM	34	SE SE	47	40.0
6 S	2 W	WM	35	SW NW	46	14.5
6 S	2 W	WM	35	SE NW	46	13.0
6 S	2 W	WM	35	NE SW	46	6.2
6 S	2 W	WM	35	NW SW	47	5.2
6 S	2 W	WM	35	NW SW	46	6.1
6 S	2 W	WM	35	SW SW	47	6.8
7 S	2 W	WM	2	NW NW	84	0.3
7 S	2 W	WM	3	NE NE	84	1.6
TOTAL						117.1

7. Transfer Application T-12445 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Distance from original well locations measured in feet (ft)	
							Well 1	Well 2
6 S	2 W	WM	34	NE SE	47	WELL 3 - 1750 FEET NORTH AND 690 FEET WEST FROM THE SE CORNER OF SECTION 34	1600 ft	1200 ft
6 S	2 W	WM	34	SE SE	47	WELL 4 - 1000 FEET NORTH AND 1205 FEET WEST FROM THE SE CORNER OF SECTION 34	2500 ft	2100 ft
6 S	2 W	WM	34	SE SE	47	WELL 6 - 150 FEET NORTH AND 1210 FEET WEST FROM THE SE CORNER OF SECTION 34	3200 ft	2800 ft
6 S	2 W	WM	35	SW SW	47	WELL 5 - 975 FEET NORTH AND 205 FEET EAST FROM THE SW CORNER OF SECTION 35	2000 ft	1400 ft

**Transfer Review Criteria (OAR 690-380-4010)**

8. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-12445.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

**Determination and Proposed Action**

The additional points of appropriation proposed in Transfer Application T-12445 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-12445 is approved, the final order will include the following:*

1. *The additional points of appropriation proposed in Transfer Application T-12445 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 44105 and any related decree.*

3. *Water right Certificate 44105 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.*
7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 7 day of June, 2017.

  
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Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

This Preliminary Determination was prepared by Jessica Joye. If you have any questions about the information in this document, you may reach me at 503-986-0814 or Jessica.L.Joye@oregon.gov

*Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>